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March 15, 2004

Tennessee Regulatory Authority
Attn: Sharla Dillon
460 James Robertson Parkway
Nashville, TN 37238

Via Hand Delivery

RE: Triennial Review Order - 9 Month Proceeding-Loop & Transport; Docket
No 03-00527

Dear Sharla

Enclosed for filing in the above-referenced matter please find the original and thirteen (13) copies of the rebuttal testimony of Marva Johnson on behalf of KMC Telecom III, LLC. Please return the date stamped file copy to the courier making this filing.

Please note that a portion of the testimony (Section C) is **confidential**.

Thank you for your assistance. If you have questions, please do not hesitate to contact me.

Sincerely,



H. LaDon Baltimore
Attorney for KMC Telecom III, LLC
LDB/dcg
Enclosures

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BEFORE THE TENNESSEE REGULATORY AUTHORITY

In re:)
)
Implementation of the Federal)
Communications Commission's) Docket No. 03-00527
Triennial Review Order)
(Nine Month Proceeding))
(Loop & Transport))
_____)

REBUTTAL TESTIMONY OF
MARVA BROWN JOHNSON
ON BEHALF OF
KMC TELECOM III, LLC

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1 **Q. PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS**
2 **ADDRESS.**

3 A. My name is Marva Brown Johnson. I am employed by KMC Telecom
4 Holdings, Inc. ("KMC Holdings"), parent company of KMC Telecom III,
5 LLC as Senior Regulatory Counsel. My business address is 1755 North
6 Brown Road, Lawrenceville, Georgia 30043.

7
8 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS**
9 **PROCEEDING ?**

10 A. I am testifying on behalf of KMC Telecom III, LLC ("KMC").
11

12 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND**
13 **AND PROFESSIONAL EXPERIENCE.**

14 A I hold a Bachelors of Science in Business Administration (BSBA), with a
15 concentration in Accounting, from Georgetown University; a Masters in
16 Business Administration from Emory University's Goizuetta School of
17 Business; and a Juris Doctor from Georgia State University. I am
18 admitted to practice law in the State of Georgia.

19 I have been employed with KMC since September 2000. I joined
20 KMC as the Director of ILEC Compliance; I was later promoted to Senior
21 Counsel and this is the position that I hold today. I am also an officer of
22 the company and I currently serve in the capacity of Assistant Secretary. I
23 manage the organization that is responsible for federal regulatory and

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1 legislative matters, state regulatory proceedings and complaints, and local
2 rights-of-way issues.

3 Prior to joining KMC as the Director of ILEC Compliance, I had
4 over eight years of telecommunications-related experience in various areas
5 including, consulting, accounting, and marketing. From 1990 through
6 1993, I worked as an auditor for Arthur Andersen & Company. My
7 assignments at Arthur Andersen spanned a wide range of industries,
8 including telecommunications. From 1994 through 1995, I was an internal
9 auditor for BellSouth. In that capacity, I conducted both financial and
10 operations audits. The purpose of those audits was to ensure compliance
11 with regulatory laws as well as internal business objectives and policies.
12 From 1995 through September 2000, I served in various capacities in MCI
13 Communications's product development and marketing organizations,
14 including as Product Development – Project Manager, Manager - Local
15 Services Product Development, and Acting Executive Manager for
16 Product Integration. At MCI, I assisted in establishing the company's
17 local product offering for business customers, oversaw the development
18 and implementation of billing software initiatives, and helped integrate
19 various regulatory requirements into MCI's products, business processes,
20 and systems.

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1 **Q. HAVE YOU TESTIFIED BEFORE THE TENNESSEE**

2 **REGULATORY AUTHORITY OR OTHER STATE PUBLIC**
3 **SERVICE COMMISSIONS?**

4 A. I have not testified before the TRA, but I have testified before the North
5 Carolina Utilities Commission on various local interconnection and
6 competition issues, including reciprocal compensation. Most recently, I
7 also have filed testimony in Florida on similar issues as I discuss herein.

8
9 **Q. PLEASE DESCRIBE THE TYPE OF SERVICE KMC PROVIDES**
10 **IN TENNESSEE.**

11 A. KMC is a facilities-based telecommunications service provider that also
12 provides service to customers through unbundled network elements leased
13 from ILECs. KMC operates throughout BellSouth's territory in
14 Tennessee. KMC provides a wide variety of integrated voice, data and
15 internet services to enterprises in the state of Tennessee.

16
17 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

18 A. In its *Triennial Review Order* ("TRO"),¹ the FCC determined that
19 incumbent local exchange carriers ("ILECs") must provide competitive
20 carriers with unbundled access to high-capacity loops and dedicated

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No 01-338), *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (CC Docket No 96-98), *Deployment of Wireline Services Offering Advanced Telecommunications*

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1 transport. Specifically, the FCC made a national finding that CLECs are
2 impaired in their ability to offer service without access to DS-1 loops, DS-
3 3 loops (up to two DS3s per location) and dark fiber loops (collectively,
4 “high capacity loops”). ¶ 202.² The FCC also found that CLECs are
5 impaired on a national basis without access to DS-1, DS-3 and dark fiber
6 dedicated transport. ¶ 359. Although the FCC found impairment, it has
7 authorized state commissions to evaluate specific claims that an ILEC
8 might advance, on the basis of specific criteria to be assessed at a
9 particular location (for loops) or on a particular route (for transport),
10 which show competing carriers are not impaired without unbundled access
11 to those elements.

12 The purpose of my testimony is to respond to BellSouth's claims
13 that KMC is a trigger candidate on particular dedicated transport routes. I
14 discuss BellSouth's claim that dedicated transport should be “de-listed” on
15 certain routes in Tennessee. In doing so, I explain that *none* of KMC's
16 transport facilities in Tennessee are eligible to be counted toward
17 satisfaction of the triggers. BellSouth did not identify KMC as a trigger
18 candidate for loop locations in its March 1, 2004 Direct Testimony.

Capability (CC Docket No 98-147), FCC No. 03-36 (rel. Aug. 21, 2003).

² All “¶” citations in my testimony are to the TRO, unless otherwise noted.

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1 **I. DEDICATED TRANSPORT**

2 **Q. HOW IS THIS SECTION OF YOUR TESTIMONY ORGANIZED?**

3 A. As explained in the Direct Testimony of Gary Ball, BellSouth argues that
4 the triggers for de-listing DS1, DS3 and dark fiber transport have been met
5 for numerous routes in Tennessee, and that unbundled access to dedicated
6 transport therefore should be eliminated on those routes. In my rebuttal
7 testimony, I will not elaborate on the appropriate interpretation of the
8 triggers, which is addressed in the Direct Testimony of Gary Ball.
9 Instead, the purpose of my testimony is to explain the application of the
10 triggers to KMC. Specifically, I explain the analysis that this the TRA
11 should undertake to determine if the dedicated transport "triggers" have
12 been met by KMC -- *i.e.*, that certain conditions exist on a specific
13 transport route that appear to indicate that a CLEC is not impaired without
14 access to UNE dedicated transport at that route. The TRA may lift the
15 unbundling obligation for dedicated transport between specific wire
16 centers, at that specific transport capacity if -- and only if -- the triggers
17 are met. I then address BellSouth's claims that KMC is a trigger candidate
18 on certain dedicated transport routes in Tennessee. As I discuss below,
19 under the appropriate application of the triggers, KMC should not be
20 included as a trigger candidate on any transport route in Tennessee,
21 because KMC's network is not configured or designed to carry traffic
22 between BellSouth central offices.

23

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1 **Q. WHAT IS THE FCC'S DEFINITION OF "DEDICATED**
2 **TRANSPORT" AS THE TERM WAS USED IN THE *TRO* AND AS**
3 **IT IS PERTINENT TO THE TRA'S DELIBERATIONS IN THIS**
4 **IMPAIRMENT PROCEEDING?**

5 A. For purposes of this impairment proceeding, "dedicated transport" has a
6 narrower meaning than industry usage. In the *TRO*, the FCC redefined
7 dedicated transport as "transmission facilities connecting incumbent LEC
8 switches and wire centers within a LATA." ¶ 365 (footnote omitted).
9 This new definition explicitly excludes "backhaul" facilities between an
10 ILEC wire center and a CLEC location, such as the CLEC switch, which
11 CLECs use to aggregate and "backhaul" their traffic to their switch.
12 Backhaul facilities had been included in the FCC's definition of dedicated
13 transport prior to the *TRO*. This definitional change means that "only
14 those transmission facilities *within* an incumbent LEC's transport network,
15 that is, the transmission facilities between incumbent LEC switches," fall
16 within the incumbent LEC's unbundling obligation. ¶ 366 (emphasis in
17 original).

18
19 **Q. WHAT WAS THE FCC'S FINDING WITH RESPECT TO**
20 **DEDICATED TRANSPORT?**

21 A. After extended proceedings and after considering an enormous factual
22 record, the FCC determined that competitive carriers are impaired
23 nationwide in their ability to provide local telecommunications services

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1 without access to dedicated transport, assessed on a route-specific,
2 capacity-specific basis and subject to defined limits. ¶¶ 359, 381-93. The
3 FCC assessed impairment on a capacity basis “[b]ecause a carrier using
4 higher capacity levels of transport has a greater incentive and broader
5 revenue base to support the self-provisioning of transport facilities.” ¶
6 377 (footnote omitted).

7 It is useful to summarize these impairment characteristics at the
8 outset, because these are the factors that the trigger analysis must show
9 have been overcome.

10

11 **Q. WHY DID THE FCC DELEGATE TO STATE COMMISSIONS**
12 **THE TASK OF ADDUCING EVIDENCE OF A LACK OF**
13 **IMPAIRMENT WITH RESPECT TO DEDICATED TRANSPORT**
14 **ON A GRANULAR ROUTE AND CAPACITY-SPECIFIC BASIS?**

15 A. The purpose of this proceeding is to focus on the services where the FCC
16 already has made a finding of impairment, as addressed in the Direct
17 Testimony of Gary Ball, and to identify those relatively rare instances in
18 which competitive carriers are not be impaired notwithstanding the
19 relative lack of traffic on such routes. The FCC concluded that the record
20 before it did not permit it to determine where, if anywhere, such routes
21 might exist. The FCC thus delegated to the states the task of determining,
22 upon a petition from an ILEC, whether that ILEC could be relieved of its
23 obligation to provide unbundled access to its facilities for a given route.

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1 **Q. WHO HAS THE BURDEN OF PERSUASION WITH EVIDENCE**
2 **OF LACK OF IMPAIRMENT?**

3 A. Under the *TRO*, BellSouth bears the burden of introducing evidence into
4 the record showing lack of impairment. The TRA is required to make a
5 determination only for those routes for which BellSouth has presented
6 “relevant evidence” that competing carriers would not be impaired if
7 access to UNE dedicated transport were eliminated. In other words, the
8 FCC’s impairment findings for dedicated transport are controlling unless
9 BellSouth has introduced evidence that meets the requirements set forth in
10 the *TRO* for demonstrating non-impairment on a route-specific basis.
11 BellSouth’s petition must be denied unless it meets the heavy burden of
12 providing evidence sufficient to overcome the affirmative findings by the
13 FCC of impairment and to enable the TRA to make an affirmative finding
14 of non-impairment.

15

16 A. Self-Provisioned Transport Trigger

17 **Q. WHAT TRIGGERS FOR DEDICATED TRANSPORT DID THE**
18 **FCC ADOPT?**

19 A. The FCC adopted two triggers – a “Self-Provisioning Trigger,” and a
20 “Wholesale Trigger.”

21

22 **Q. WHAT IS THE DIFFERENCE BETWEEN THE SELF-**
23 **PROVISIONING TRIGGER AND THE WHOLESALE TRIGGER?**

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1 A. The Self-Provisioning Trigger measures the extent to which competitive
2 carriers have deployed transport facilities along a given route for their own
3 use. To satisfy the Self-Provisioning Trigger, BellSouth must demonstrate
4 that three or more unaffiliated and competing carriers have each deployed
5 transport facilities on that route. ¶ 405. To qualify as “trigger-eligible,”
6 each self-provisioned facility on the route must be operationally ready to
7 provide transport between specific ILEC central office pairs. ¶ 406.

8 The Wholesale Trigger, by contrast, measures the extent to which
9 competing carriers have deployed transport facilities along a given route
10 that are available to other competing carriers at wholesale. To satisfy the
11 Wholesale Trigger, BellSouth must show that “two or more competing
12 carriers, not affiliated with each other or the ILEC, offer wholesale
13 transport service completing that route.” ¶ 412.

14
15 **Q. WHAT KEY CRITERIA DID KMC ANALYZE IN DETERMINING**
16 **WHETHER KMC SATISFIED THE SELF-PROVISIONING**
17 **TRIGGER?**

18 A. The FCC has identified at least five key criteria for determining whether
19 the Self-Provisioning Trigger has been satisfied. As explained in the
20 Direct Testimony of Gary Ball, BellSouth must satisfy *each* of these
21 criteria in order to satisfy the trigger.

22 (1) *Route-Specific Review* - The FCC requires that the transport
23 trigger analysis must be performed on a route-specific basis. ¶ 401. It

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1 defines a transport route as a complete “connection between [ILEC] wire
2 center or switch ‘A’ and [ILEC] wire center or switch ‘Z.’” ¶ 401. The
3 FCC has explained that “if, on the incumbent LEC’s network, a transport
4 circuit from ‘A’ to ‘Z’ passes through an intermediate wire center ‘X,’ the
5 competitive providers *must offer service connecting wire centers ‘A’ and*
6 *‘Z,’* but do not have to mirror the network path” through X. ¶ 401
7 (emphasis added). Although the FCC placed no defined limitation on the
8 number of hops (i.e. passes through an office and/or intermediate
9 electronics) a transport circuit might make between end points and still be
10 considered a route between ‘A’ and ‘Z’, transport circuits offered by a
11 CLEC that make many hops may not offer the same quality of service as
12 ILEC transport with fewer (or no) hops. The introduction of every
13 intermediate office or additional electronic device between points ‘A’ and
14 ‘Z’ adds more potential points of failure and potential degradation of
15 service. The question, then, is whether the CLEC identified as a trigger
16 candidate self-provides dedicated transport between the two central offices
17 at issue (regardless of whether the CLEC’s transport circuit follows the
18 same path as the ILEC’s circuit). See ¶ 365.

19 The FCC has emphasized, however, that a carrier does not qualify
20 under the triggers unless it provides transport for the *entire* route between
21 A and Z. The FCC specifically rejected ILEC claims that competitors
22 could be forced to use a “daisy chain” of individual links, managed by
23 multiple providers, between intervening wire centers. ¶ 402. Thus, any

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1 evaluation of impairment with respect to transport has to focus, first and
2 foremost, on whether three other providers are each providing transport
3 services that provide a complete connection between the two ILEC wire
4 centers at issue.

5 Accordingly, it should be self-evident that a SONET ring that
6 passes by wire center "A", but is not *connected* to ILEC wire center "A",
7 cannot count as a trigger for transport routes including ILEC wire center
8 "A." Likewise, a "hub-and-spoke" arrangement including a SONET ring
9 that collects traffic from ILEC wire centers "A" and "Z," but carries that
10 traffic solely to a CLEC point of presence and not to the other ILEC wire
11 center, would not qualify as a trigger. It should also be self-evident that an
12 alleged transport route between two ILEC wire centers that passes through
13 a CLEC's switch does not qualify as a dedicated transport route, because
14 the traffic on that route is being switched by equipment that is part of the
15 CLEC's network.

16 (2) *Operational Readiness* - To be counted as trigger-eligible, a
17 self-provisioned facility "must be operationally ready to provide transport
18 into or out of an incumbent LEC central office." ¶ 406.

19 (3) *Capacity Levels* – The trigger analysis must be performed for
20 each particular capacity of transport (*i e* , DS-3 or dark fiber).

21 (4) *Providers Must Own the Facilities*. The unaffiliated carriers
22 must own the transport facilities.

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1 (5) *Providers Must be Unaffiliated* – Alternative self-providers of
2 transport must be unaffiliated.

3
4 **B. Wholesale Transport Facilities Trigger**

5 **Q. WHAT ELEMENTS OF THE KEY CRITERIA FOR THE**
6 **WHOLESALE TRIGGER WERE MOST CRITICAL TO KMC’S**
7 **TRIGGER ANALYSIS?**

8 A. As explained in the Direct Testimony of Gary Ball, the carrier must be
9 operationally ready and willing to sell the particular capacity of transport
10 wholesale along the route in question. In other words, a carrier’s
11 wholesale transport facilities do not count toward satisfaction of the
12 trigger (1) if the transport facility is not operationally ready and
13 immediately available, or (2) if the carrier does not generally offer access
14 to other carriers. ¶ 414.

15 *Operational Readiness.* With respect to operational readiness, the
16 FCC emphasized the need for “safeguards against counting alternative
17 fiber providers that may offer service, but do not yet have their facilities
18 terminated or collocated in the incumbent LEC central office, or are
19 otherwise unable to immediately provision service along the route” *Id*
20 (emphasis added). If the purported wholesaler cannot connect with CLEC
21 customers, for example, through CLEC-to-CLEC cross-connects at the
22 relevant central offices, then the wholesaler would not be operationally
23 ready to provide services to all CLECs. Similarly, if CLECs cannot

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1 terminate their UNE loops directly with the wholesaler, then the
2 wholesaler is not operationally ready to provide a real alternative to ILEC
3 transport.

4 The FCC has also made clear that a wholesale provider would not
5 qualify under the trigger if the wholesale provider's facilities terminate
6 only in a collocation arrangement located at an incumbent LEC's
7 premises. Rather, in addition to such collocation in an ILEC's premises,
8 the wholesale provider's facilities must also terminate "in a similar
9 arrangement at each end of the transport route that is not located at an
10 incumbent LEC premises." 47 C.F.R. 51.319(e)(1)(ii)(C) (FCC rules for
11 DS-1 transport); see also § 51.319(e)(2)(B)(3) (same for DS-3 transport);
12 § 51.319(e)(3)(B)(3) (same for dark fiber transport). The requirement of
13 additional points of termination at each end of the route helps to ensure
14 that the ostensible wholesaler's facilities are accessible to those CLECs
15 that are not collocated at the ILEC premises.

16 Lastly, in setting the trigger at three competitive facilities, the FCC
17 specifically acknowledged the need to allow for the possibility that some
18 network owners may not be interested in providing wholesale services in
19 contrast with the wholesale availability trigger which counts only *actual*
20 wholesalers. ¶ 407 (emphasis added). In doing so, the FCC specifically
21 acknowledged KMC's lack of interest in providing wholesale transport
22 services on its network. ¶ 407 n. 1260

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1 *Broadly Offered.* The carrier must also offer its wholesale services
2 broadly. Thus, for example, a carrier that sells transport to only one other
3 company and does not make its services widely available would not
4 qualify as a wholesaler for purposes of the trigger. ¶ 414.

5 Likewise, a wholesaler's dedicated transport is not operationally
6 ready or widely available if the wholesaler either lacks the operations
7 support systems needed to support CLEC use, or lacks the collocation
8 arrangements necessary to ensure that CLECs can readily cross-connect
9 their facilities in the applicable ILEC end-offices that define the transport
10 route. *See, e.g.,* ¶¶ 373, 414. In other words, for a wholesale carrier to
11 qualify for purposes of the Wholesale Trigger, other CLECs must be able
12 to access the alternative facilities by cross-connecting their collocations to
13 the wholesaler's collocation (or to a fiber termination panel) "in a
14 reasonable and non-discriminatory manner." *See* ¶ 414 n.1279. In
15 particular, the ostensible offer of wholesale transport must satisfy the
16 FCC's collocation rules, which clarify "nondiscriminatory principles
17 including the right to interconnect with other collocated competing
18 carriers by cross-connection." *Id* A carrier that does not offer cross-
19 connection that satisfies these requirements does not qualify as a
20 wholesaler for purposes of the trigger, because "the wholesale trigger
21 counts only wholesale offerings that are readily available." *Id*

22

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1 business of – and are not interested in – providing dedicated transport on a
2 wholesale basis. *See TRO* at note 1260. At bottom, there is simply no
3 basis for BellSouth to question KMC's discovery responses, which state
4 that it does not provide wholesale transport in Tennessee at any capacity
5 level.

6 **II. TRANSITION ISSUES**

7 **Q. WHAT TRANSITION MECHANISM SHOULD THE TRA ADOPT**
8 **IF IT FINDS THAT A DEDICATED TRANSPORT TRIGGER IS**
9 **SATISFIED?**

10 A. The principal focus of this testimony, at this stage of the impairment
11 proceedings, has been on the criteria relevant to an evaluation of any
12 incumbent LEC claim that competing LECs are not impaired with respect
13 to a particular transport route. Nevertheless, the *TRO* assigns one further
14 role to the state commission that merits mention here. The FCC
15 “expect[s] that states will require an appropriate period for competitive
16 LECs to transition from any unbundled transport that the state finds should
17 no longer be unbundled.” *TRO* ¶ 417. The FCC left it to the states to
18 determine the parameters of an “appropriate” transition.

19

20 **Q. WHAT PRINCIPLES SHOULD GOVERN A TRANSITION?**

21 A. The principles that should guide the setting of an appropriate transition
22 period are straightforward. At a minimum, the TRA should set a transition
23 period that provides competing carriers a reasonable period of time to (1)

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1 self-provision the transport in question and (2) continue to offer service
2 using UNEs pursuant to existing contracts. The latter is essential because
3 services to enterprise customers are contract-based and not terminable by a
4 carrier that might face a sudden increase in costs. Because this is the first
5 time that CLECs face the loss of loops and transport as a UNE, they may
6 face transition situations in multiple jurisdictions where they must migrate
7 customers off such arrangements. Adjusting to such multiple changes will
8 require some time, as well as substantial capital.

9

10 **Q. WHAT ARE YOUR RECOMMENDATIONS CONCERNING A**
11 **TRANSITION?**

12 A. We recommend that the TRA develop a multi-tiered transition process
13 such as the one applicable to mass market switching. First, there should
14 be a transition period of nine months in which CLECs may order “new”
15 UNEs on routes where the TRA finds a trigger is met. The FCC noted that
16 “the statutory maximum transition period of nine months will ensure an
17 orderly transition to the new rules” and “is reasonably consistent with the
18 transition period sought by the parties.” TRO ¶ 703. Second, CLECs
19 should have a transition period equal to that applied to line sharing and
20 mass market switching, with reasonable partial milestones for intermediate
21 periods. Thus, for example, assuming that the TRA issues its decision in
22 July of this year, except for grandfathered contracts, all loops and
23 transport UNEs should be migrated from the specified routes by October

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1 2006, with one-third of UNE facilities transitioned within 13 months of a
2 finding of no impairment, one-third within 20 months and the remainder
3 within 27 months. Compare ¶ 532 (timeline for mass-market switching).
4 Third, and in all events, a CLEC should not be required to migrate any
5 customer to non-UNE facilities until the end of an existing service
6 contract term. Fourth, until migrated, all dedicated transport UNEs should
7 remain available at the state-defined TELRIC rate. Finally, the TRA
8 should also adopt an exception process that accounts for the multitude of
9 potential operational problems that may occur when CLECs attempt to
10 construct facilities. If a carrier demonstrates that it is attempting in good
11 faith to construct facilities on a route for which UNE facilities have been
12 eliminated and that it is incurring a specific problem that makes
13 construction within the applicable timeframe unachievable (for example,
14 issues with rights of way), it should be permitted to seek an exception
15 from the TRA consistent with the problem it faces. The CLEC should be
16 permitted to continue to purchase the identified facility as a UNE until the
17 TRA acts on its request.

18

19 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

20 **A. Yes.**